

## **REMARKS**

The Examiner objected to Claims 1-20 as containing informalities. The Examiner rejected Claims 8 and 9 under 35 U.S.C. § 102(b) as being anticipated by Riviere, Patent Number 5,641,242. The Examiner rejected Claims 10, 11, 15, 16, and 18-20 under 35 U.S.C. § 103(a) as being unpatentable over Riviere in view of Bucher. The Examiner rejected Claims 12 and 13 under 35 U.S.C. § 103(a) as being unpatentable over Riviere in view of Bucher and, further, in view of Wilkins. The Examiner rejected Claim 14 under 35 U.S.C. § 103(a) as being unpatentable over Riviere in view of Bucher, and, further, in view of Egan. The Examiner objected to Claim 17 as depending from a rejected base claim. Such rejections and objections are noted.

Claims 1, 6, 7, and 11 to 20 have been amended, Claims 8 and 9 have been withdrawn, Claim 10 has been cancelled, without prejudice, and Claim 21 has been added. Applicant respectfully submits that Claims 1 to 7 and 11 to 21 are allowable.

### **Objections to Claims**

The Examiner objected to Claims 1 to 20 because the claims referred to a pivot point. In order to avoid any ambiguity with respect to claim terms, Applicant has amended Claims 1, 6, 7, 18, and 19 to refer to a "pivotal axis." Also, new Claim 21, which is a combination of Claims 10 and 17, includes the phrase "pivotal axis." Applicant thanks the Examiner for pointing out that a "pivot point" is a misnomer. The phrase "pivotal axis" is less ambiguous because the pair of rails attach to the pair of support members at two points that are on a pivotal axis. Applicant respectfully submits that the objection to Claims 1 to 20 have been overcome. Accordingly, Applicant respectfully request the Examiner withdraw his objection to the claims.

### **Rejection Under 35 U.S.C. § 102(b)**

With respect to the Examiner's rejection of Claims 8 and 9 under 35 U.S.C. § 102(b), Applicant has cancelled Claims 8 and 9, without prejudice. However, Applicant points out that Claims 8 and 9 include means-plus-function limitations, as defined by 35 U.S.C. § 112, sixth paragraph. A means-plus-function limitation must be interpreted to cover the corresponding structure, materials, or acts in the specification and "equivalents thereof." 35 U.S.C. § 112, sixth paragraph; *see also*

MPEP § 2181. The Examiner "must apply 35 U.S.C. 112, sixth paragraph in appropriate cases, and give claims their broadest reasonable interpretation, **in light of and consistent with the written description of the invention in the application.**" MPEP 2181, sub-section I, pg. 2100-220, 8th ed., rev. 2 (emphasis added).

Accordingly, it is necessary to consider the specification in determining the scope of the rejected claims. Paragraphs 34 to 38 of Applicant's Specification describe the structures corresponding to the means-plus-function limitations of the claims. Further, Applicants respectfully submit that the Riviere does not disclose structures, nor their equivalents, corresponding to those disclosed in Applicants' specification, and, therefore, Riviere does not teach every element of the claimed invention. In particular, Claim 8 includes the limitation for "a means for moving said means for holding from a loading position into a stowed position." Paragraph 37 of Applicant's Specification states: "The function of moving the pair of rails **114** from a loading position into a stowed position is implemented, in one embodiment, by the winch **132** retracting the cable **202** attached to the watercraft **108** with the watercraft **108** against the bumper **204**, thereby causing the pair of rails **114**, with the watercraft **108** on them, to rotate about the pivot point **206**." Applicant notes that Riviere discloses an apparatus that relies upon the weight of the boat **54** to cause the pivoting frame **18** to pivot. Riviere, Col. 4, lines 32-35 ("By turning winch **50**, cable **52** pulls boat **54** up onto pivoting frame **18**. When boat **54** has been moved far enough forward, pivoting frame **18** will begin to pivot, with first end **32** falling until pivoting frame **18** is coplanar with stationary frame **14**." (emphasis added)) This is contrasted to the structure disclosed in the Specification in which the pivoting action is accomplished by the cable moving over the pulley on the rail member.

Accordingly, Applicants respectfully request that the Examiner withdraw his rejection of Claims 8 and 9 and allow the claims. If the Examiner does not agree that Claims 8 and 9 are allowable, Applicant requests that the Examiner cancel the withdrawn claims, without prejudice.

### **Obviousness Under 35 U.S.C. § 103**

The Examiner rejected Claims 10 to 20 under 35 U.S.C. § 103(a) as being unpatentable over Riviere in view of one or more of Bucher, Wilkins, and Egan. For

the sake of expediency and without conceding that the claims are obvious in view of the prior art, Applicant has cancelled independent Claim 10, without prejudice, and added new Claim 21, which is a re-presentation of Claim 10 and dependent Claim 17, which was objected to as depending from a rejected base claim. Claims 11 to 20 have been amended to refer to new Claim 21, which is allowable.

New Claim 21 includes all the limitations of Claim 10 and Claim 17. Also, Claim 21 includes reference to a pivotal axis, as discussed above with respect to the claim objection to the phrase "pivot point." Because the Examiner indicated that Claim 17 would be allowable if rewritten to include all of the limitation of the base claim and any intervening claims, Applicant believes Claim 21 is in condition for allowance. Further, Claims 11 to 20 have been amended to refer to new Claim 21. Accordingly, Applicant believes Claims 11 to 20 are in condition for allowance.

The first element in establishing a prima facie case of obviousness is that "there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings." MPEP § 2143. The second element is that there must be a reasonable expectation of success. *Id.* The third element is that "the prior art reference (or references when combined) must teach or suggest all the claim limitations." *Id.* "There are three possible sources for a motivation to combine references: the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art." *In re Rouffet*, 149 F.3d 1350, 1357, 47 U.S.P.Q.2d 1453, 1457-58 (Fed. Cir. 1998) (The combination of the references taught every element of the claimed invention, however without a motivation to combine, a rejection based on a prima facie case of obvious was held improper); *see* MPEP § 2143.01.

With respect to the Examiner's rejections, Applicant notes that Riviere discloses an apparatus that relies upon the weight of the boat **54** to cause the pivoting frame **18** to pivot. Riviere, Col. 4, lines 32-35 ("By turning winch **50**, cable **52** pulls boat **54** up onto pivoting frame **18**. When boat **54** has been moved far enough forward, pivoting frame **18** will begin to pivot, with first end **32** falling until pivoting frame **18** is coplanar with stationary frame **14**."). This is contrasted to the claim in which the

pivoting action is accomplished by the cable moving over the pulley on the rail member. The cable **34** and pulley **33** arrangement disclosed in Bucher is used to pull the telescoping frame over a pair of rollers **27** and onto a trailer. The operation of the pulley of Bucher is not the same as that in Claim 10. Because of the differences in configuration and operation between Riviere and Bucher, and because there is no suggestion or motivation to combine the two references, Applicant respectfully submits that the first element of a *prima facie* case of obviousness has not been shown. Further, the third element of a *prima facie* case of obviousness, that the references teach or suggest all the claim limitations, has not been shown. In particular, neither Riviere nor Bucher disclose that the "cable rotates said rail member about said pivotal axis." Riviere relies upon gravity to rotate the pivoting frame **18** and Bucher does not have a pivotal axis, instead, Bucher has an upper or telescoping frame that travels on rollers **26**, **27**. Riviere, Col. 4, lines 32-35; Bucher, Col. 4, lines 40-42. However, in view of the cancellation of Claim 10, the obviousness rejections by the Examiner are moot.

### **Conclusion**

In view of the amendment of Claims 1, 6, 7, and 11 to 20, the withdrawal of Claims 8 and 9, the cancellation of Claim 10, without prejudice, and the addition of Claim 21, it is believed that the above-identified patent application is in a condition for the issuance of a Notice of Allowance. Such action by the Examiner is respectfully requested. If, however, the Examiner is of the opinion that any of the drawings or other portions of the application are still not allowable, it will be appreciated if the Examiner will telephone the undersigned to expedite the prosecution of the application.

Please charge any additional fees associated with this communication, or credit any overpayment, to Deposit Account No. 16-1910 (29265.00).

Respectfully submitted,



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